



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/526,467 | 03/03/2005 | Jill Silver | 2-399 | 1086 |
| 23117 | 7590 | 11/30/2005 | EXAMINER | |
| NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203 | | | HALE, GLORIA M | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3765 | |

DATE MAILED: 11/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/526,467 | SILVER ET AL. | |
| | Examiner | Art Unit | |
| | Gloria Hale | 3765 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16-33 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 16-33 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 March 2005 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>3-3-05</u> . | 6) <input type="checkbox"/> Other: ____. |

Specification

The disclosure is objected to because of the following informalities: on page 1, line 8 "realized" should read - - realized - - .

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 29-33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 29-33 depend from claim 16. However, the metes and bounds of claims 29-33 are unclear. It is not clear as to whether applicant intends to claim the brassiere of claim 16 in addition to the package or just the package alone.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 16, 17, 19, 25 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Noble et al (US 5,755,611).

In regard to claims 16, 17 and 19 Noble et al discloses a strapless garment of a length having two ends with cups 22 therebetween with hypoallergenic adhesive 46,48

Art Unit: 3765

secured at either end (on the cups) to contact the wearer's body with the outer surface of the adhesive covered with a releasable cover 52A,52B,54A,54B. The garment of Noble et al can be re-applied to the user. In regard to claims 25 and 26, the garment of Noble et al is wearable as lingerie or as a bikini top. (See Noble et al, figures 18-21 and col. 5, line 36 – col. 6, line 64).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 21-24, 27 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Noble et al (US 5,755,611) in view of Mellinger (US 3,934,593). Noble et al discloses a strapless garment as claimed and as discussed above. However, Noble et al does not specifically disclose the garment material as being a laminate of two layers of heat cured material around a layer of foam. Noble et al only discloses a single layer of material and a single layer of foam. Mellinger discloses a cup material as being a laminated foam layer 18 with two outer material layers therearound. (See Mellinger, figure 2; col. 1, lines 53-64; col. 3, lines 25-46. The edges are sealed as claimed in claims 24 and 28 as seen in figure 2 and in col. 3, lines 25-26. Accordingly it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the garment of Noble et al with the teaching of Mellinger to construct the garment with an inner foam layer surrounded by two outer

Art Unit: 3765

layers instead of one in order to provide a fabric layer to the interior of the garment next to the wearer's skin or comfort. It also would have been obvious to construct the material of any known lingerie materials such as spandex instead of the tricot materials used by Noble et al. and Mellinger since it is well known to use spandex materials in lingerie garments to provide a desired aesthetic effect and comfort to the wearer. Such a substitution would have been obvious to one having ordinary skill in the art at the time the invention was made especially since it has been held to be within the skill of one of ordinary skill in the art to select a known material to achieve the benefits of that known material for a desired end use. In re Leshin 125 USPQ 416.

Claims 18 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Noble et al. in view of Furuno et al. (US 6,200,195).

Noble et al. discloses the brassiere substantially as claimed with a hypoallergenic adhesive. However, Noble et al. does not specifically disclose the adhesive as being a well known hydrogel that is well known to be used to attach items to a wearer's body such as in medical patches. Furuno et al. discloses an adhesive pad with such a hydrogel thereon to adhere the pad to the wearer. (See Furuno et al., Col. 3, lines 7-62). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the brassiere of Noble et al. with the teaching of Furuno to use silicone hydrogel adhesive or any other known adhesive instead of the hypoallergenic adhesive used therein in order to gain the benefits of the other known adhesives such as being more hypoallergenic yet reusable as claimed.

Art Unit: 3765

Claims 29-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Noble et al in view of Schwartz (US 3,837,476).

Noble et al discloses the invention substantially as claimed. However, Noble et al does not specifically disclose the package for the brassiere. Schwartz discloses a package 10 comprising a container with hanging means 39, two separable parts 12,14 that are opened to access the garment with a wall shaped 20,22,16,18 to complement the garment shape. The package of Schwartz is stackable as seen in figure 6 and also since any item is stackable as broadly claimed. There is an "area" in between the cups at 26 to hold the covers as claimed. The package has a socket (28,30,32,34,36,38) and a shoulder 24,26. (See col. 4, line 31 – col. 5, line 56 and figures 1-3 and 6.

Conclusion

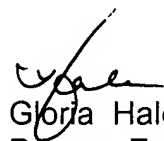
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria Hale whose telephone number is 571-272-4984. The examiner can normally be reached on Tues.-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on 571-272-4983. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3765

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Gloria Hale
Primary Examiner
Art Unit 3765
